the case out of the exception by reason of the appellant appearing to have taken undue advantage of the deceased and having acted in a cruel or unusual manner. Nevertheless, this was a question of fact which the jury had not been directed to weigh in their deliberations. The majority verdict of 5 to 2 clearly reveals that there was a certain measure of disagreement which fortifies us in saying we cannot be sure that, if specifically directed with regard to sudden fight, the jury might not have found the appellant guilty of the lesser offence.

For this reason we will allow this appeal with regard to conviction of murder and substitute therefor a verdict of culpable homicide not amounting to murder, punishable under section 304 of the Penal Code.

We have carefully considered what should be the appropriate sentence. The attack made on the deceased with the spade caused frightful injuries, but one of the four would have sufficed to cause mortal injury, rendering the other three superfluous. In all the circumstances, we sentence the appellant to 10 years' imprisonment, dating from the day of his arrest.

Appeal with regard to conviction for murder allowed. Verdict of culpable homicide not amounting to murder substituted.

Solicitors: *Ernest V. Devadason & Co.*

KOK SWEE TENG & ANOR. v. PEROLA NAVIGATION & TRADING CO. LTD.

[F.C. (Tan Ah Tah F.J., Chua & Winslow JJ.) August 28, 1968]

[Singapore—Federal Court Civil Appeal No. Y21 of 1968]

Practice and Procedure — Final judgment entered by registrar — High court varying decision of registrar by granting leave to defend — Whether justified — R.S.C. 1934, O. XIV.

The respondents sued the appellants for the sum of $74,212.50 on two dishonoured cheques. The deputy registrar gave the respondents leave to sign final judgment on the amount claimed. On appeal the High Court granted the appellants leave to defend on the condition that they furnish security in the sum of the amount claimed to the satisfaction of the registrar within 14 days. On appeal to the Federal Court,

Held: (1) the High Court had been left with a real doubt about the good faith of the appellants and desired to protect the respondents in circumstances which would work no hardship to the appellants within the principle enunciated in *Fieldrank Ltd.* v. *E. Stein* (1);

(2) in the case of the first cheque there were circumstances which created a real doubt about the *bona fides* of the defence and the order of the High Court should be confirmed. In the case of the second cheque there was a fair probability of a defence which entitled the defendants to unconditional leave to defend without having to furnish security to the value of the second cheque.

Cases referred to:—

(1) *Fieldrank Ltd.* v. *E. Stein* [1961] 1 W.L.R. 1287.

(2) *Leadbitter* v. *Farrow* 105 E.R. p. 1077.

FEDERAL COURT.

J.B. Jeyaretnam for the appellants.

Arul Chandran for the respondents.

Cur. Adv. Vult.

Winlsow J. (delivering the judgment of the court): This is an appeal against that part of the decision of the learned Chief Justice delivered in chambers on 7th June, 1968 requiring the defendants/appellants to furnish security in the sum of S$74,212.50, to the satisfaction of the registrar within 14 days. He granted the defendants conditional leave to defend, the condition being the furnishing of the security aforesaid.

The deputy registrar had previously on 6th May, 1968 given the plaintiffs/respondents leave to sign final judgment for the sum of S$74,212.50. This was the amount claimed by plaintiffs on two dishonoured cheques, one dated 10th August, 1967 for H.K.$100,000, and the other a cheque dated 5th January, 1967 for H.K.$40,000.

The defendants were the drawers of the first cheque dated 10th August, 1967 which was payable to the plaintiffs.

With regard to the second cheque dated 5th January, 1967, the defendants, as holders in due course, had indorsed it over in favour of the plaintiffs.

Although the deputy registrar gave leave to sign final judgment in full as claimed, presumably on the ground that no defence had been made out to his satisfaction on the materials before him, the learned Chief Justice, on an appeal from this order, by granting the defendants conditional leave to defend, appears to have taken the view, on the same materials, that although there was some kind of a triable issue it was not one which inclined him to grant unconditional leave to defend. It would also appear that he had been left with a real doubt about the good faith of the defendants and desired to protect the plaintiffs in circumstances which would work no hardship to the defendants within the principle enunciated in *Fieldrank Ltd.* v. *E. Stein.*(1)

We have carefully considered the arguments addressed to us by counsel for the defendants and for the plaintiffs on the merits of the defence as disclosed by the affidavits filed on both sides.

We are of the view that the case in respect of each cheque must be taken separately. While there was undoubtedly a close relationship between the parties, as owners and charterers of the m.v. "Perola" respectively, as a result of which certain monies became due to the plaintiffs

as owners from the defendants as charterers it should be borne in mind that whereas the first cheque relates solely to monies said to be due under the charter party and the joint trading arrangements between them, the second (and earlier) cheque does not.

We do not consider it desirable to express our views at any great length on the facts contended for in the various opposing affidavits as this may tend to pre-judge issues which will require final determination at the trial itself.

It may suffice to indicate that in the case of the first cheque there are circumstances which create a real doubt about the *bona fides* of the defence. To give an example, there is real doubt as to whether the defendants were merely acting as agents for an Indonesian company, Lampong N.V., and not as principals, in relation to the charter and the joint trading arrangements between the parties. *Leadbitter* v. *Farrow* [2] is against them. Secondly, one Kosin Dermawan, whose affidavit supports the "agency" defence, is a son of one of the defendants. This seems to us to lend credence to the plaintiffs' contention that he, at least, is trying to provide an escape route for his father from responsibility for the first cheque. Furthermore, the defence contention that only a comparatively smaller sum was due at the time the first cheque was issued, completely ignores heavier disbursements incurred in Indonesia (of which details had not yet come to hand) and in respect of which disbursements the plaintiffs required to be reassured in the form of an advance payment to account on the basis of an estimate.

With regard to the first cheque, therefore, we would confirm the order of the learned Chief Justice.

The second cheque, however, was issued a little more than 7 months earlier than the first cheque mentioned in the statement of claim.

That cheque reached the plaintiffs via the defendants who indorsed it in their favour but it had originally been drawn by a firm of the father of the managing director of the plaintiffs. The latter did not seriously challenge the defendants with regard to this cheque and had promised to refer the matter to his father, when the cheque was dishonoured, reserving his right to demand payment from the defendants as indorsers. There is also a substantial point raised about whether notice of dishonour of this cheque had been clearly brought to the attention of the drawer and the defendants under section 48 of the Bills of Exchange Ordinance, 1949 (F. of M. No. 75 of 1949).

In our judgment, therefore, the defence in respect of the second cheque is not open to the same strictures as that in respect of the first cheque and there is accordingly a fair probability of a defence which entitles the defendants to unconditional leave to defend without having to furnish security to the value of this second cheque.

We would accordingly partially allow the appeal to the effect that the defendants need only furnish security to the value of S$52,937.50 instead of S$74,212.50, to the satisfaction of the registrar, within 14 days hereof.

Appeal partially allowed.

Solicitors: *J.B. Jeyaretnam & Co.; Rodyk & Davidson.*

YAP LIAN v. KRIS INVESTMENT CO. LTD.

[F.C. (Wee Chong Jin C.J., Chua and Winslow JJ.) October 24, 1968]

[Singapore—Federal Court Civil Appeal No. Y.7 of 1968]

Landlord and Tenant — Recovery of possession of land and building — Whether controlled premises — Onus — Demeanour — Exercise of discretion by judge — Control of Rent Ordinance (Cap. 242).

The respondents sued the appellant in the district court for possession of certain lands at Holland Road together with the building erected thereon and for consequential relief. The respondents alleged that the appellant was not entitled to the protection of the Control of Rent Ordinance because the building was built after September 7, 1947 and that even if it was built before that date, the alterations carried out to the said building had caused a change of identity so that it should be regarded as a new building. The district judge dismissed the claim on the grounds that (a) she was not satisfied that the respondents had discharged the onus of proving that the premises were built after September 7, 1947 and (b) even if the main building was substantially altered and became a new building, the other separate buildings on the land were old buildings and all buildings on the land would be rent controlled premises. The district judge further decided the case on the demeanour of the appellant and accepted him as a truthful witness although the respondents called a building inspector and overseer attached to the chief building surveyor's department and his supervisor to give evidence to the effect that the building was a new building. On appeal to the High Court Tan Ah Tah F.J. allowed the appeal and ordered a new trial.

Held, dismissing the appeal: (1) there was cogent evidence at the conclusion of the respondents' case that the respondents had discharged the onus of proving that the premises were built after September 7, 1947 and were accordingly unprotected under the Ordinance;

(2) the impression as to the demeanour of the defendant should not have been adopted without testing it thoroughly against the official minutes and departmental procedures and other evidence in the case;

(3) the learned High Court judge had exercised his discretion carefully in ordering a new trial before another district judge.

Per Curiam: Where, as in the present case, a question arises as to the weight to be attached to documentary exhibits and official minutes taken in conjunction with the evidence of officials relating thereto, on the one hand, and the evaluation of the evidence of the defendant on the other, it is most important that any finding based on demeanour alone as to the credibility of a witness should not be reached without taking into account and testing it against the documentary exhibits and the